(2)

Supreme Court, U.S.
FILED
JAN 23 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-794

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

THE GARMENT DISTRICT, INC.,
Petitioner,

vs.

BELK STORES SERVICES, INC., MATTHEWS-BELK COMPANY AND JANTZEN, INC.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

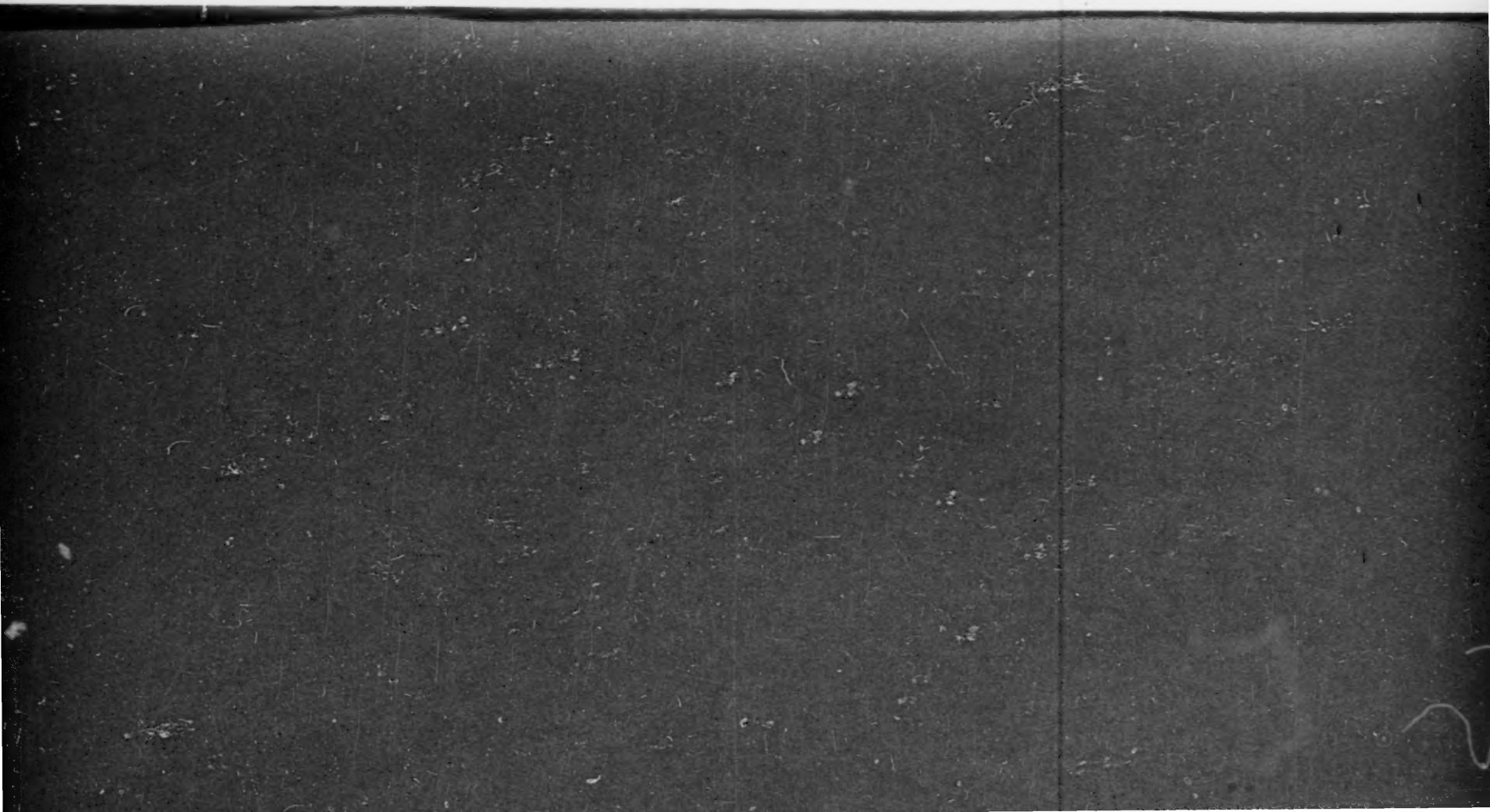
A. WARD MCKEITHEN*
EVERETT J. BOWMAN
Robinson, Bradshaw & Hinson, P.A.
1900 Independence Center
101 N. Tryon Street
Charlotte, North Carolina 28246
(704) 377-2536
Attorneys for Respondent
Jantzen, Inc.

and

E. OSBORNE AYSCUE, JR.
BENNE C. HUTSON
Smith Helms Mulliss & Moore
227 North Tryon Street
Post Office Box 31247
Charlotte, North Carolina 28231
Telephone: 704/372-9510
Attorneys for Respondents
Belk Stores Services, Inc.
and Matthews-Belk Company

Counsel of Record

24pp



QUESTION PRESENTED

The sole question presented by this Petition for Writ of Certiorari is whether the United States Court of Appeals for the Fourth Circuit correctly applied this Court's decision in *Monsanto Co. v. Spray-Rite Service Corp.*, in affirming a directed verdict for the respondents in this dealer termination case.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
STATEMENT	1
REASONS FOR DENYING THE PETITION	3
I. Petitioner failed to present evidence sufficient under *Monsanto* to create an issue for the jury as to the existence of an agreement, conspiracy or concerted action to fix or maintain resale prices	3
A. The *Monsanto* standard	3
B. Petitioner failed to present sufficient evidence of an agreement, conspiracy or concerted action to fix or maintain resale prices	4
II. Acceptance of petitioner's position that antitrust liability can be proven upon showing petitioner's termination as a "discounter" would be contrary to *Monsanto* and inconsistent with sound economic and public policy	8
III. The decision of the Fourth Circuit does not conflict with applicable decisions of courts in other circuits	10
IV. The unusual facts of this case dictate that the petition for writ of certiorari be denied	13
CONCLUSION	15
APPENDIX	1a

TABLE OF AUTHORITIES

	Page
Cases	
Business Electronics Corporation v. Sharp Electronics Corporation, 780 F.2d 1212 (5th Cir. 1986), *petition for cert. filed*, 54 U.S.L.W. 3795 (U.S. May 21, 1986) (No. 85-1910)	12
Cernuto, Incorporated v. United Cabinet Corporation, 595 F.2d 164 (3d Cir. 1979)	11
Marco Holding Co. v. Lear Siegler, Inc., 606 F. Supp. 205 (N.D. Ill. 1985)	11
McCabe's Furniture, Inc. v. La-Z-Boy Chair Co., 798 F.2d 323 (8th Cir. 1986)	12
Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752, 104 S.Ct. 1464, 79 L.Ed.2d 775 (1984)	*passim*
National Marine Electronic Distributors, Inc. v. Raytheon Company, 778 F.2d 190 (4th Cir. 1985)	6, 7, 12
The Garment District, Inc. v. Belk Stores Services, Inc., 799 F.2d 905 (4th Cir. 1986) *petition for cert. filed*, 55 U.S.L.W. 3394 (U.S. November 17, 1986) (No. 86-794)	*passim*
The Jeanery, Inc. v. James Jeans, Inc., 1984-2 Trade Cas. ¶66, 278 (D. Ore. 1984)	10
Victorian House, Inc. v. Fisher Camuto Corporation, 769 F.2d 466 (8th Cir. 1985)	11

	Page
Westman Commission Company v. Hobart International, Inc., 796 F.2d 1216 (10th Cir. 1986), *petition for cert. filed*, 55 U.S.L.W. 3259 (U.S. September 22, 1986) (No. 86-484)	12
Zidell Explorations, Inc. v. Conval International, Ltd., 719 F.2d 1465 (9th Cir. 1983)	11
Statutes	
15 U.S.C. Sec. 1	2
15 U.S.C. Sec. 15	2

IN THE

Supreme Court of the United States

No. 86-794

OCTOBER TERM, 1986

THE GARMENT DISTRICT, INC.,
Petitioner,

vs.

BELK STORES SERVICES, INC., MATTHEWS-BELK COMPANY AND JANTZEN, INC.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The respondents, Belk Stores Services, Inc., Matthews-Belk Company and Jantzen, Inc., submit this brief in opposition to petitioner's Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit and respectfully pray that the petition be denied.

STATEMENT

Petitioner The Garment District operated a retail apparel store in Gastonia, North Carolina for approximately two years beginning in 1981. Respondent Matthews-Belk Company operates two retail department stores in Gastonia. Respondent Belk Stores Services provides various services to Belk stores in the Southeast. (For purposes of this Brief, these two respondents will be referred to collectively as the

Belk respondents).[1] Respondent Jantzen[2] is a nationally known producer of sportswear and swimwear.

Petitioner brought what is commonly known as a dealer termination case. Petitioner sued for damages under Section 4 of the Clayton Act, 15 U.S.C. §15, claiming that it was terminated as a retailer of Jantzen apparel pursuant to a price-fixing conspiracy among the respondents in violation of Section 1 of the Sherman Act, 15 U.S.C. §1. The United States District Court for the Western District of North Carolina, Potter, C.J., granted a directed verdict for the respondents. 617 F.Supp. 944. The United States Court of Appeals for the Fourth Circuit unanimously affirmed. 799 F.2d 905.

To reach the jury on its claim, The Garment District had the burden of producing evidence from which the jury could find two required facts:

> (1) That respondents entered into an agreement or conspiracy or otherwise engaged in concerted action; *and*
>
> (2) That the agreement, conspiracy or concerted action was to fix or maintain resale prices.

Monsanto Co. v. Spray-Rite Service Corp., 465 U.S. 752, 104 S.Ct. 1464, 79 L. Ed. 2d 775 (1984). Both the District Court and the Fourth Circuit, applying this Court's decision in *Monsanto*, held that The Garment District failed to produce sufficient evidence of either of the required facts and granted and affirmed, respectively, a directed verdict for the respondents.

---

[1]Pursuant to Rule 28.1 of the Rules of the Supreme Court of the United States, a list naming all parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of the Belk respondents appears in the appendix at p. 1a.

[2]Pursuant to Rule 28.1 of the Rules of the Supreme Court of the United States, a list naming all parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of Jantzen appears in the appendix at p. 1b.

REASONS FOR DENYING THE PETITION

I.

Petitioner Failed To Present Evidence Sufficient Under *Monsanto* To Create An Issue For The Jury As To The Existence Of An Agreement, Conspiracy Or Concerted Action To Fix Or Maintain Resale Prices.

A. The Monsanto Standard.

In *Monsanto,* this Court set the standard for proving when the termination of a dealer violates Section 1 of the Sherman Act. It held, 465 U.S. at 768, that for a plaintiff to prevail on such a claim:

> [T]here must be evidence that tends to exclude the possibility of independent action by the manufacturer and distributor. That is, there must be direct or circumstantial evidence that reasonably tends to prove that the manufacturer and others had a conscious commitment to a common scheme to achieve an unlawful objective.

This Court went on to state that a plaintiff like The Garment District cannot prove its case by relying on inferences from highly ambiguous evidence. *Monsanto,* 465 U.S. at 763.

Most significantly, this Court in *Monsanto* held that a plaintiff cannot prevail merely by showing that its termination followed or was in response to complaints by other dealers.

> Permitting an agreement to be inferred merely from the existence of complaints, or even from the fact that the termination came about "in response to" complaints, could deter or penalize perfectly legitimate conduct . . . [D]istributors are an important source of information for manufacturers. In order to assure an efficient distribution system, manufacturers and distributors constantly must coordinate their activities to assure that their product will reach the consumer persuasively and efficiently. To

> bar a manufacturer from acting solely because the information on which it acts originated as a price complaint would create an irrational dislocation in the market.

465 U.S. at 763. Rather, a plaintiff must present evidence of "something more" than complaints by competitors. *Monsanto,* 465 U.S. at 764.

In this case, where the petitioner has attempted to parlay its characterization of itself as a "discounter" and of its complaining competitor as a "keystone" retailer into proof of an agreement to maintain resale prices, the attempt must fail absent evidence of the requisite "something more." Both the District Court and the Fourth Circuit Court of Appeals correctly determined that The Garment District did not satisfy this evidentiary requirement.

B. Petitioner Failed To Present Sufficient Evidence of An Agreement, Conspiracy or Concerted Action To Fix or Maintain Resale Prices.

The Garment District's sole claim is that respondents agreed or conspired to fix prices. Under *Monsanto,* The Garment District could not prove its price fixing claim merely by showing that Jantzen terminated it following or in response to complaints by Belk. Rather, The Garment District had to present evidence of "something more" which showed that Jantzen and Belk *"had a conscious commitment to a common scheme"* to fix prices. *Monsanto,* 465 U.S. at 768. (Emphasis added.) In short, The Garment District had to produce some additional evidence beyond its mere termination which demonstrated that the respondents conspired or agreed *to fix prices.*

The Garment District failed to present any such evidence. Rather, the uncontradicted evidence (all of it presented by witnesses for The Garment District since the case was decided on a motion for a directed verdict at the end of petitioner's evidence) was that the respondents *did not* agree to fix prices. As the Fourth Circuit found:

> Jantzen did not set retail prices. Crippen[3], testifying on behalf of The Garment District, said that although Jantzen suggested retail prices, *each merchant was free to set its own prices.* Ivey's, Matthews-Belk and World of Clothing[4] sold at different prices without interference from Jantzen.
>
> . . . Although Jantzen responded favorably to Belk's complaints about The Garment District, it did not enter into any agreement with Belk to fix or maintain retail prices. *Belk and its neighboring competitor, Ivey's, remained free to set their own prices.*

799 F.2d at 908-909. (Emphasis added.) The Garment District claimed only that the respondents acted in concert to fix prices. By failing to show any price fixing, The Garment District failed to prove any concerted action for the purpose of which it complained.

Ignoring this fundamental problem, The Garment District argues that it satisfied the *Monsanto* standard for proving a price fixing conspiracy because it presented evidence of something more than "mere complaints," namely threats, pressure and coercion by Belk. Based on this evidence, The Garment District claims that the Fourth Circuit ignored previous decisions of this Court which have held that an unlawful agreement need not be voluntary but can be the result of coercion. This argument, however, indicates a fundamental

---

[3]Jay Crippen was the Jantzen sales representative handling the Belk account who also, unknown to Jantzen, founded and was an officer and part owner of The Garment District. He sold the Jantzen line to The Garment District, thereby creating the relationship the termination of which gave rise to this action. Crippen's involvement in the formation and ownership of The Garment District and in selling to it violated policies of Jantzen which Crippen had previously agreed, in writing, to follow. *See, infra* at pages 13-14; 799 F.2d at 906.

[4]Ivey's was a nearby competitor of Matthews-Belk and The Garment District. World of Clothing was identified by plaintiff as another "discounter" to whom Jantzen sold.

misunderstanding of this Court's decision in *Monsanto* and the Fourth Circuit's application of it in this case.

The Garment District alleged that the respondents entered into a *price fixing* conspiracy. In *Monsanto,* this Court did not hold that complaints and threats were entirely irrelevant in cases such as this. *Monsanto,* 465 U.S. at 764, n. 8. Rather, this Court held that such complaints, in and of themselves, were not sufficient evidence of a *price fixing* agreement. There must be evidence of something more than just complaints, threats, or coercion, and that "something more" must show a conscious commitment to a common scheme to fix prices.

The Fourth Circuit correctly applied this standard. In its decision, the Fourth Circuit does not hold or state in *dictum* that an agreement cannot be the result of coercion. What the Fourth Circuit does hold is that coercion alone is not sufficient evidence of or a substitute for independent evidence of price fixing. This holding is consistent with and is required by this Court's decision in *Monsanto.* By its very argument, The Garment District admits that it presented nothing more than evidence of coercion. Under *Monsanto,* this is not enough.

This case is not the first time the Fourth Circuit has applied this Court's decision in *Monsanto.* In *National Marine Electronic Distributors, Inc. v Raytheon Company,* 778 F.2d 190 (4th Cir. 1985), a catalog retailer (National Marine) claimed that a manufacturer (Raytheon) terminated sales to it because of a conspiracy with other retail dealers to maintain resale prices. There was substantial evidence that other dealers complained to Raytheon and that:

> some complaints rose to the level of threats that the dealers would cease doing business with Raytheon if the relationship with National was not terminated. The [district] court also found that Raytheon's decision was made in the context of these complaints and that the complaints played a part in the decision.

Raytheon, 778 F.2d. at 192. Despite this evidence, the terminated dealer did not reach the jury because the evidence also showed (as it did in The Garment District's case) that the individual dealers determined their own sales prices. Based upon such evidence, the Fourth Circuit in *Raytheon*, 778 F.2d at 192-193, held:

> The difficulty with National's case is in its lack of evidence that reasonably tends to prove that Raytheon and the complaining dealers schemed to terminate National *for the purpose of restraining price competition. Indeed, the evidence is to the contrary.*
>
> . . . .
>
> Raytheon did not require its dealers to sell at any fixed price. The dealers set their own retail prices, each taking into consideration its own cost of goods, overhead expenses, and a profit margin that was as much as the market would bear considering demand and competition. Raytheon's dealers competed with each other and with dealers who sold competing brands of similar products. This evidence refutes the charge that Raytheon conspired with one or more dealers to terminate National for the purpose of restraining price competition.

(Emphasis added.)

Monsanto clearly sets forth the evidence necessary to establish an actionable dealer termination case. Both the District Court and the Fourth Circuit correctly determined that The Garment District failed to present sufficient evidence to make out a case under *Monsanto*. Those determinations should not be disturbed.

II.

Acceptance Of Petitioner's Position That Antitrust Liability Can Be Proven Upon Showing Petitioner's Termination As A "Discounter" Would Be Contrary To *Monsanto* And Inconsistent With Sound Economic And Public Policy.

Both the District Court and the Fourth Circuit found that The Garment District failed to produce any evidence of price fixing. To the contrary, The Garment District's own evidence showed that Belk and other retailers were free to set whatever prices they wanted without interference from Jantzen and did in fact set prices independently.

Despite this evidence, The Garment District nevertheless contends that it presented sufficient evidence of price fixing. By mischaracterizing the Fourth Circuit's opinion as requiring agreement as to a specific price, The Garment District contends that this position is inconsistent with previous decisions of this Court. From this erroneously constructed premise, The Garment District appears to contend that it proved price fixing by showing that because it was a discounter its termination had an effect on resale prices notwithstanding the absence of any evidence of such effect.

The Garment District's position should be rejected for a number of reasons. First, The Garment District's argument begs the question whether an agreement to fix prices ever existed. Rather, the argument simply assumes that when a retailer complains to a manufacturer about a "discounter" and the manufacturer thereafter terminates the discounter, a price fixing conspiracy has been shown. In *Monsanto,* this Court expressly rejected that contention. Likewise, as the Fourth Circuit noted in its decision in this case:

> [T]he critical element in the *Monsanto* analysis is not what motivates the distributors to complain, but rather what motivates the manufacturer to terminate discounters in response to these complaints. Here, as in *Raytheon,* the manufacturer sought to retain many dealers by sacrificing one. It acted without exacting an agreement from the remaining dealers to maintain prices.

799 F.2d at 910.

Second, the Fourth Circuit did *not* hold that an agreement as to the specific price to be charged is a necessary element of a price fixing agreement. Rather, the Fourth Circuit limited its analysis to the issue whether sufficient evidence of a price fixing agreement had been presented by The Garment District. Finding that the evidence was not sufficient, the Fourth Circuit had no need to consider, and in fact did not consider, issues such as price or other terms of any such nonexistent agreement.

Third, there was no evidence presented that Jantzen's termination of The Garment District had any effect whatsoever on resale prices of Jantzen's merchandise. Finally, and dispositive of The Garment District's argument, this Court in *Monsanto* rejected such an "effects" analysis:

> [T]he economic effect of all the conduct described above — unilateral and concerted vertical price-setting, agreements on price and non-price restrictions — is in many, but not all, cases similar or identical .... And judged from a distance, the conduct of the parties in the various situations can be indistinguishable ....
>
> Nevertheless, it is of considerable importance that independent action by the manufacturer, and concerted action on non-price restrictions, be distinguished from price-fixing agreements, since under present law the latter are subject to *per se* treatment and treble damages. On a claim of concerted price-fixing, the antitrust plaintiff must present evidence sufficient to carry its burden of proving that there was such an agreement ....
>
> Permitting an agreement to be inferred merely from the existence of complaints, or even from the fact that termination came about "in response to" complaints, could deter or penalize perfectly legitimate conduct .... To bar a manufacturer from acting

> solely because the information upon which it acts originated as a price complaint would create an irrational dislocation in the market.

Monsanto, 465 U.S. at 762-763.

Respondents submit that acceptance of The Garment District's position would undermine the sound analysis of *Monsanto*, and invite the assertion of antitrust claims by any terminated dealer, no matter what the reasons for the termination, since to maintain such a suit the dealer would have to show only that the termination had an effect on resale price in the relevant market. A supplier with legitimate business reasons for terminating a dealer could no longer do so out of fear of becoming an antitrust defendant. Such a situation is the type of "irrational dislocation" that the decision in *Monsanto* was designed to avoid.

To maintain consistency with *Monsanto* and to avoid the dislocation inherent in subjecting businesses, taking justifiable actions, to unwarranted antitrust claims, the Fourth Circuit's decision should be allowed to stand without further consideration.

III.

The Decision Of The Fourth Circuit Does Not Conflict With Applicable Decisions Of Courts In Other Circuits.

As an additional reason for granting its petition, The Garment District argues that the decision of the Fourth Circuit conflicts with the decisions of courts in other circuits in applying *Monsanto*. In support of this argument, The Garment District points to the fact that the Fourth Circuit in its opinion refused to follow the decisions of three courts (two of which are District Courts) in other circuits to the extent that those decisions were inconsistent. In addition, The Garment District cites two other decisions with which it claims the Fourth Circuit's decision conflicts.

As to the cases cited by the Fourth Circuit in its opinion, there is in fact no real conflict. Two of the cases, *The Jeanery, Inc. v. James Jeans, Inc.*, 1984-2 Trade Cas.

¶66,278 (D.Ore. 1984) and *Marco Holding Co. v. Lear Siegler, Inc.*, 606 F. Supp. 205 (N.D.ILL. 1985), involve, like this case, application of this Court's decision in *Monsanto.* In those cases, both courts determined that the plaintiff had presented sufficient evidence to create a jury issue as to the existence of a price-fixing conspiracy. However, in those cases, there was evidence which showed communications between manufacturers and retailers regarding prices to be charged and attempts by the parties to enforce a certain price level. No such evidence was presented in this case. The difference between those cases and the instant case lies not in the standard applied by the various courts but rather in the evidence being reviewed under the appropriate standard. The cases do not conflict. Rather, they agree as to the standard to be applied in determining whether a dealer termination case reaches the jury but reach different results on different facts.

The final case cited by the Fourth Circuit for an apparent conflict is *Cernuto, Incorporated v. United Cabinet Corporation,* 595 F.2d 164 (3d Cir. 1979). As the Fourth Circuit pointed out, *Cernuto* was decided before this Court's decision in *Monsanto.* To the extent that *Cernuto* holds that termination of a "discount" retailer after complaints by a competitor is sufficient evidence to take a case to the jury on a claim of unlawful price fixing, the decision is no longer good law. The same holds true for the decision in *Zidell Explorations, Inc. v. Conval International, Ltd.*, 719 F.2d 1465 (9th Cir. 1983), which The Garment District also claims conflicts with the decision of the Fourth Circuit. Like *Cernuto, Zidell* was decided prior to this Court's decision in *Monsanto* and, to the extent it is at odds with that decision, it is no longer valid.

The final case with which the Garment District claims the Fourth Circuit's decision conflicts is *Victorian House, Inc. v. Fisher Camuto Corporation,* 769 F.2d 466 (8th Cir. 1985). Analysis of this decision, however, discloses that it does not even deal with the issue being addressed by the Fourth Circuit in this case. In *Victorian House,* the manufacturer

announced a new policy which was implemented by a retailer who was also an employee of the manufacturer. In implementing the policy, the retailer recommended termination of a competitor, a recommendation that was adopted by the manufacturer. The case does not involve complaints by a retailer about a competitor's pricing and does not address whether such complaints are sufficient to create a jury issue on a price-fixing conspiracy claim. In fact, the decision in *Victorian House* does not even mention this Court's decision in *Monsanto.*

In *Monsanto,* this Court set forth the evidentiary standard that must be satisfied to show that the termination of a dealer is pursuant to an agreement or conspiracy to fix or maintain resale prices. The Fourth Circuit's application of *Monsanto* in this case and in its earlier *Raytheon* decision is consistent with the application of *Monsanto* by other circuits.[5] That the results of this case may be different from the results reached in other courts on other evidence does not support a conclusion that there is a conflict among those courts on what the law is or how it should be applied. There being no disagreement among the various courts as to what the applicable standard is, there is no confusion, ambiguity or other reason for this Court to reconsider that standard.

---

[5]*See, e.g., McCabe's Furniture, Inc. v. La-Z-Boy Chair, Co.,* 798 F.2d 323 (8th Cir. 1986) (discount retailer failed to present sufficient evidence that its termination was for the purpose of maintaining resale prices); *Westman Commission Company v. Hobart International, Inc.,* 796 F.2d 1216, 1224 (10th Cir. 1986), *petition for cert. filed,* 55 U.S.L.W. 325d (U.S. September 22, 1986) (No. 86-484) ("Since the record reveals not the slightest hint of price maintenance or price fixing, Hobart's refusal to deal cannot be illegal per se"); and, *Business Electronics Corporation v. Sharp Electronics Corporation,* 780 F.2d 1212, 1218 (5th Cir. 1986), *petition for cert. filed,* 54 U.S.L.W. 3795 (U.S. May 21, 1986) (No. 85-1910) (terminated retailer cannot show a price fixing conspiracy where the competing distributor retains "complete freedom to set whatever price it chooses.").

IV.

The Unusual Facts Of This Case Dictate That The Petition For Writ Of Certiorari Be Denied.

This case was decided on motion for directed verdict. Both the District Court and the Court of Appeals were, therefore, required to view the evidence in a light most favorable to The Garment District and to give it the benefit of all reasonable inferences that could be drawn from the evidence. 799 F.2d at 906. As it did in its written briefing to the Court of Appeals, The Garment District in its petition has pushed this liberal standard beyond its intended limits, ignoring unfavorable (and uncontradicted) portions of its own evidence and substituting its unproven contentions for other evidence that conflicts with them.[6] The record as recited by The Garment District does not support review by this Court. This conclusion is strengthened further when the entire record is considered, even under the most stringent directed verdict standard.

In its petition, The Garment District makes no mention of the origin of The Garment District or of how it came to be a retailer of Jantzen merchandise. At trial, the undisputed evidence was that Jay Crippen, Jantzen's salesman for the area

---

[6]The Fourth Circuit in the statement of facts in its opinion itself went beyond the standard for reviewing directed verdicts in accepting for the sake of its analysis not only petitioner's evidence viewed in its most favorable light, but also some of petitioner's contentions not supported by evidence or reasonable inferences arising from that evidence. In that respect, it drew "inferences from highly ambiguous evidence" for the sake of demonstrating that even then the petitioner did not prove its case. That the Fourth Circuit may in some respects have gone beyond the reasonable inferences that petitioner's evidence would have supported, particularly in its assumption that the stated reason for the termination was a pretext, does not in any way affect the validity of its opinion in this case or provide a basis for review. The Fourth Circuit's assumptions that went beyond reasonable inferences arising from the evidence worked against the respondents, not the petitioner.

where both Belk and The Garment District were located, owned a majority of the stock in The Garment District and that he opened his new store's account with Jantzen. The evidence further showed that Crippen's ownership and sales to The Garment District violated established personnel policies of Jantzen. In January 1981, approximately eight months before the formation of The Garment District, Crippen had signed a written statement that he would abide by certain policies of Jantzen, one of which was that "no employee may hold any interest in any business which sells Jantzen products." Crippen signed this statement again in 1982, at a time when he was already directly violating the policy.

The evidence further showed that Crippen deliberately concealed his interest in The Garment District from Jantzen. When he began to sell Jantzen goods to The Garment District, he submitted a new account form to Jantzen headquarters in Portland, Oregon. Although the form asked for identification of the owners of The Garment District, Crippen did not identify himself as an officer and a shareholder, let alone the majority shareholder that he was. Crippen also instructed a prospective employee of The Garment District to keep his involvement a secret, and when asked by his immediate supervisor if he had an interest in the store, Crippen denied it. Jantzen did not confirm Crippen's role until after its termination of The Garment District.

The evidence showed that opening a Jantzen account for The Garment District also violated a general Jantzen policy of confining distribution of Jantzen apparel to department stores and specialty stores (a policy that Jantzen applied except in localities where there were no available alternatives).

The evidence also showed that upon the first visit by Crippen's supervisor at Jantzen to The Garment District after it opened for business, and upon the supervisor's seeing that it was a self-service operation located in a former grocery store, he instructed Crippen to ask The Garment District to terminate its account with Jantzen voluntarily. Instead,

Crippen drafted a letter to himself as the Jantzen representative for The Garment District's manager (whom he had hired) to sign, stating that The Garment District refused to be terminated. Crippen admitted that he did not encourage The Garment District to terminate its Jantzen account voluntarily because he owned over half of its stock. At no time did Crippen tell anyone at Jantzen that he had written the letter. Rather, he let Jantzen mistakenly believe that the manager of The Garment District was the author. Jantzen unilaterally terminated the account after The Garment District declined to relinquish it.

Petitioner's entire case is grounded on the termination of a brief business relationship that had its genesis in deception and dishonesty. Because these facts are highly unusual, as well as for the reasons previously cited, this Court should deny The Garment District's petition.

CONCLUSION

This petition presents no novel issues which this Court has not previously decided. Rather, the case involves a simple, and correct, application of this Court's decision in *Monsanto.* The evidence affirmatively showed that there was no agreement among any of the respondents with regard to resale prices. At most, the petitioner showed that it was a retailer of Jantzen products, that Belk complained about Jantzen's selling to it and that following, in response to or in the context of those complaints, it was terminated by Jantzen. This Court held in *Monsanto* that such evidence is not sufficient proof to reach the jury in an action under Section 1 of the Sherman Act. The decision of the Fourth Circuit Court of Appeals is consistent not only with this Court's decision in *Monsanto* but also with the decisions of courts of other circuits which have applied *Monsanto.*

Furthermore, the case involves unique facts that make it an inappropriate vehicle for an opinion by this Court.

For these reasons, the petitioner's Petition for a Writ of Certiorari to the Fourth Circuit Court of Appeals should be denied.

Respectfully submitted,

A. WARD MCKEITHEN*
EVERETT J. BOWMAN
Robinson, Bradshaw & Hinson, PA.
1900 Independence Center
101 N. Tryon Street
Charlotte, North Carolina 28246
(704) 377-2536
Attorneys for Respondent Jantzen, Inc.

and

E. OSBORNE AYSCUE, JR.
BENNE C. HUTSON
Smith Helms Mulliss & Moore
227 North Tryon Street
Post Office Box 31247
Charlotte, North Carolina 28231
(704) 372-9510
Attorneys for Respondents Belk Stores Services and Matthew-Belk Company
**Counsel of Record*

Dated: January 22, 1987.

APPENDIX

Matthews-Belk Company has no parent corporation. It owns controlling interest in Belk's Department Store of Paris, Texas, Inc. and Belk Department Store of Greenville, Texas, Inc. Belk Stores Services, Inc. has no parent or subsidiary companies. There are approximately two hundred separate mercantile companies, all of which have corporate names that include the name "Belk" or the name "Leggett" that are "affiliates" in the sense that they have some common owners (all of the owners are members of the Belk or Leggett families or present or former store management personnel or their heirs) and that they operate stores which, like the stores operated by Matthews-Belk Company, utilize the services of Belk Stores Services, Inc.

Jantzen, Inc. is a wholly-owned subsidiary of Blue Bell, Inc., which is the wholly-owned subsidiary of Ring Company, which is the wholly-owned subsidiary of VF Corporation.

VF Corporation is also the 100% owner of the following companies:

Basset-Walker, Inc.
Modern Globe, Inc.
Troutman Industries, Inc.
Grafika Commercial Printing, Inc.
Kay Windsor, Inc.
Vanity Fair Mills, Inc.
Direct Marketing Services, Inc.
VF Industrial Park, Inc.
VF International Division, Inc.
The Lee Apparel Company, Inc.
VF Factory Outlet, Inc.
Millis & Geiger, Inc.
The H. D. Lee Company, Inc.*
Northeast Sales Company, Inc.

In addition to Jantzen, Inc., the following are wholly-owned subsidiaries of Blue Bell, Inc.:

JanSport Inc.
Blue Bell Canada, Inc.
Blue Bell Apparel Limited
Wrangler Espana, S. A.
Blue Bell (Malta) Limited
Wrangler Denmark Apparel A/S
Blue Bell Wrangler Do Brasil-
Industria de Confeccones, Limitada
Globe Superior, S. A.

*The H. D. Lee Company, Inc., a wholly-owned subsidiary of VF Corporation, has a number of foreign subsidiary companies, which are not listed.